

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MEGAN A. LEMANTON,

Defendant.

CASE NO. 8:09CR384

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 36, 37). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties object to the quantity of controlled substance attributable to the Defendant and the base offense level in ¶ 22. They also object to the 2-level enhancement in ¶ 23 under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm. Those objections are based on the plea agreement, which: recommends a base offense level of 26 based on a drug quantity of at least 50 but less than 200 grams of methamphetamine; and states the parties' agreement that the Defendant did not possess a firearm or dangerous weapon in connection with the offense. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld. The base offense level should be calculated as level 26, and the 2-level enhancement under § 2D1.1(b)(1) should not apply. The total offense level is 23, and the guideline range is 92-115 months imprisonment, consistent with the Defendant's calculation. The government's calculation of a total offense level of 25 and a guideline range of 110-137 months is in error.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing No. 37) are granted;
2. The government's objections to the PSR (Filing No. 36) are denied as to the government's calculation of a total offense level of 25 and a guideline range of 110-137 months, and otherwise the government's objections are granted;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 15th day of April, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge